Lepel Corporation *and* Local 918, International Brotherhood of Teamsters, AFL–CIO. Case 29–CA–19699

May 30, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On November 22, 1996, Administrative Law Judge Steven Davis issued the attached decision. The Charging Party filed exceptions and a supporting brief, the Respondent filed an answering brief, and the Charging Party filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The complaint is dismissed.

[1] The Charging Party has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In light of the judge's credibility resolutions, we find that the General Counsel failed to meet his evidentiary burden to show that the Respondent's withdrawal of recognition was preceded by impermissible promises of benefit or threats of reprisal, or that the Respondent otherwise violated the Act as alleged.

Emily DeSa, Esq., for the General Counsel.
Adin Goldberg, Esq. (Epstein, Becker & Green, P.C.), of New York, New York, for the Respondent.
Steven Kern, Esq. (Law Office of Roy Barnes, Esq.), of Bronx, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. Based on a charge and an amended charge, filed on January 11 and February 20, 1996, respectively, by Local 918, International Brotherhood of Teamsters, AFL–CIO (the Union), a complaint was issued by Region 29 of the National Labor Relations Board (NLRB or the Board) against Lepel Corporation (Respondent) on April 17, 1996.

The complaint, as amended at the hearing, alleges that Respondent, which had a collective-bargaining agreement with the Union: (a) promised its employees a wage increase, a profit-sharing plan, and a new medical insurance plan if they refrained from joining, supporting, or assisting the Union; (b) threatened to cease providing its employees with medical benefits if they joined, supported, or assisted the Union; (c) informed its employees that it would be futile for them to join or support the Union; (d) promised its employees a wage increase and new health benefits if they refrained from joining or supporting the Union; (e) bypassed the Union and dealt directly with its employees regarding their terms and conditions of employment; (f) withdrew its recognition of the Union as the exclusive collective-bargaining agent of the employees; and (g) unilaterally ceased making contributions to the Union Welfare Fund as required by its collective-bargaining agreement, and implemented a new health insurance plan and modified the wages and other terms and conditions of employment of its employees.

Respondent's answer denied the material allegations of the complaint, and on July 24 and 25, 1966, a hearing was held before me in Brooklyn, New York.

On the evidence presented in this proceeding, and my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the General Counsel, the Union, and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a New York corporation, has its principal office and place of business at 50 Heartland Boulevard, Edgewood, New York, has been engaged in the production of induction heating equipment. During the past year, Respondent purchased and received at its Edgewood facility products, goods, and materials valued in excess of $50,000 directly from points outside New York State. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent also admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The Union has had a collective-bargaining relationship with the Respondent for many years. Its last 3-year collective-bargaining agreement was due to expire on January 4, 1996, and set forth that the Union represented Respondent's employees in the following unit:

> All production, maintenance and shipping employees, drivers and drivers' helpers, excluding technicians, draftsmen and outside service and sales engineers, office employees, professional employees, guards, watchmen, and supervisors within the meaning of Section 2(11) of the Act.

At the time at issue, about 28 unit employees, and 465 nonunit employees were employed by Respondent.

III. THE GENERAL COUNSEL'S EVIDENCE

On October 31, 1995, the Union sent a letter to Lepel, requesting that the parties meet, apparently in order to negotiate a new agreement. On November 7, Daniel Becker, Respondent's vice president for manufacturing operations, replied in writing, asking the Union to provide "advance specifics of any proposed changes from the current agreement," and to contact him with dates for negotiations.

Jasper Cumella, the Union's vice president and business agent responsible for servicing Respondent's shop, called

Shop Steward Michael Levesque and told him that the contract was due to be renegotiated, and asked him to obtain from the employees their demands for a new contract.

Cumella testified that in November, he called Becker and told him that they should agree on dates to meet, and Becker agreed. Assuming that this conversation occurred, no dates were agreed on.

Cumella testified that on about December 3 he called Becker and told him that his newborn daughter needed cardiac surgery, and that Becker should "bear with" him with respect to bargaining. Cumella added that if negotiations had not concluded by the end of the month he would prepare a 30-day extension to the contract. Becker agreed to that procedure, urged Cumella to take care of his personal problems which were more important, and assured him that the parties would reach a "settlement."

Cumella stated that during December he spoke to Becker frequently about the contract. No dates for bargaining were set, however, because of his daughter's condition, and his frequent hospital visits. Becker told him "not to worry about it." Becker testified that they had agreed to a December 14 bargaining session, which was canceled by the Union because of Cumella's family emergency.

Cumella asserted that during December he also remained in contact with Steward Levesque, and told him that a 30-day extension would be signed if no agreement had been concluded by the end of the month. Levesque urged him to make sure that the extension was executed. During their conversations, Levesque did not indicate that either he or any other union member was interested in abandoning the Union.

Cumella further testified that on December 27, he called Becker and told him that he would prepare a 30-day extension to the agreement since time was getting late, and they should begin negotiations. Becker replied that the contract should be agreed to quickly because Union Official Roger Immerglick agreed at their last negotiation that the employees would pay any increases in medical coverage.[1]

Becker testified that when Cumella called he asked him what issues would be raised in the negotiations. Cumella said that he did not know. Becker then asked about the Union Welfare Fund, and Cumella replied that "of course it was going up." Becker stated that regarding the reopening negotiation, "The only reason why we had agreed, really proceeded with the agreement that we had at that time was because Roger had very firmly indicated that should any future increases come about in the health costs to the Teamsters union as a result of whoever they are contracting their coverage with, that this most definitely would be borne by the employees."

Cumella replied that Immerglick had not agreed that employees would pay for any increases in medical coverage, and he asked Immerglick, who was in the union office, if he had. Immerglick denied telling Becker that. Becker said that "we'll see how the contract proceeds." Immerglick testified that at the reopener session Respondent sought an agreement that employees pay for such increases, but the Union refused to agree to that.

Cumella immediately called Levesque, and told him that he believed that Becker was "starting to play games." Levesque agreed with Cumella that Immerglick had not said that the employees would pay any increase in medical coverage.

Cumella then faxed to Becker a document which stated that the contract would be extended for 30 days to February 5, 1996, "with the understanding that any agreement reached between the parties shall be retroactive to January 5, 1996."

The following day, December 28, Becker faxed a letter to Cumella in reply to the extension agreement. The letter provided, in material part, as follows:

> It is unfortunate that your unforeseen circumstances have prevented the discussion of a new agreement on behalf of the union members. We were certainly prepared to consider the special personal circumstances, but it is difficult to believe that the union members would desire agreement to the proposed extension rider.
>
> . . . .
>
> During our discussions of the unexpected increase in union welfare fund costs to Lepel last year, Roger Immerglick noted that this was due completely to increased medical costs. We noted further that the union fund costs to Lepel will have risen 74% in 4 years (from $210 per month to a record $365 per month per union employee), and that Lepel could save considerably by insuring the union members through our own insurance plan.
>
> Roger promised that should there be any further increases, the union members would have to bear the union fund cost increases through payroll deductions. I was then advised prior to signing the new agreement which granted the monthly union fund increase that the union membership at Lepel had been informed of the future payroll deduction during your union meeting.
>
> Should Roger's promise come about, *your proposed rider would require retroactive payroll deductions from union members to fund the increased union fund costs.*
>
> Please advise if you would like to seek the opinion of the union members before proposing this extension rider with the respective contingencies and special provisions. [Emphasis in original.]

When Cumella received Becker's letter, he was told by an employee of Respondent, who happened to be at the Union that day, that the employees wanted the parties to execute the extension agreement. Cumella gave him a copy of the extension agreement, with instructions that the employees sign it and give it to Cumella when he visited the shop.

On receiving Becker's letter, Cumella called him, and told him that the employees wanted an extension agreement, adding that he would be at the shop to negotiate the contract. No date was specified. Between that time and January 3, 1996, Cumella had no contact with Becker.

On January 3, Cumella arrived at the shop with Union Secretary Treasurer and Welfare Administrator Immerglick. They went to Steward Levesque and asked for the signed extension agreement. Levesque, who was with other employees, replied that he did not have it, and asked the union officials whether they had heard what had transpired. Cumella testi-

[1] Pursuant to the terms of the contract, a reopening negotiation was held in December 1994, at which the parties agreed that effective January 1, 1995, Respondent was to contribute $365 per month, per employee, for the Union's Welfare Fund. This amount represents an increase from the following contractual rates in the prior years of the contract: January 1, 1993: $275; January 1, 1994: $330.

fied that Levesque told him that the employees had a meeting with the Employer. They voted not to have the Union represent them any longer because the Employer told them that it would give them a better medical package, large raises, and a profit-sharing plan, and they would be treated the same as the "inside" employees if they got "rid" of the Union.[2]

Cumella asked them if they received these promises in writing, and the employees said that they had not. Cumella responded that they better think about what would happen, adding that as soon as the Union was eliminated Respondent would terminate most of them, and he heard that the Employer has already hired an additional 20 employees to replace them as soon as the Union was out of the shop.

Cumella testified that at that point Becker approached them, threw his arms around two employees and asked, sarcastically, if he could help him. They went with him to his office, where Cumella asked him how he could offer the workers medical benefits, wage increases, and profit sharing to get rid of the Union. Becker said he did not do that, but he offered them medical benefits. Cumella then said that he had no further business there and left.

On January 5, 2 days later, Becker sent the following letter to the Union:

> It appears that a majority of our employees do not wish to have your union represent them for purposes of collective bargaining. Accordingly, we decline to recognize and bargain with your union, unless and until it is certified by the National Labor Relations Board as the collective bargaining representative of the employees.

On the expiration of the contract on January 4, 1996, Respondent has made no contributions to the Union's Welfare Fund, and has not notified the Union concerning a new medical insurance plan, or increased wages.

IV. THE EMPLOYEE MEETINGS

A. *General Counsel's Witnesses*

Omer Ozturk, a union member who has been employed by Respondent for nearly 30 years, testified that Becker called a meeting of the employees in December 1995, at about the time the contract was due to expire.[3]

He stated that at the meeting, attended by all the employees, Becker offered the workers better insurance, pay raises, and profit sharing if they left the Union, and said that they would be treated the same as the office workers. Ozturk asked for a written guarantee. He did not recall Becker's reply, but said he repeated that the workers would receive everything he promised them.

Ozturk asserted that 1 to 7 days' later, Steward Levesque conducted a meeting of all the workers to vote by secret ballot to see whether they wished to continue to have union representation. No company officials or supervisors were present. A majority voted to discontinue their support for the Union. After the vote, employee Herman Luci asked those employees who were not interested in union representation to sign a petition. Ozturk was not asked to sign.

The petition, dated January 2, stated that, "We the undersigned employees no longer wish to have union representation or a collective bargaining agent." At about the same time, according to Ozturk, Becker called another meeting with employees. Present were all the workers, Becker, John Stoll, Respondent's president, and Leonard Denmark, Respondent's agent for health insurance administration.

According to Ozturk, at that meeting, Becker offered better benefits, including profit sharing, and membership in PruCare HMO if they eliminated the Union. However, in his pretrial affidavit, Ozturk stated that no mention was made of the Union at that meeting.

Another meeting was held on January 22, at which Denmark and an insurance company representative spoke about medical insurance coverage.

Ozturk stated that sometime after that meeting, either 1 day or a couple of weeks later, he was summoned to Becker's office, where Becker told him that Respondent would give him a raise and other benefits, including profit sharing, and would treat him like the other, nonunit workers, if the Union was eliminated. Ozturk replied that he was not interested in a pay raise, and would prefer his current benefits. Becker said, "[O]kay." In mid-January, Ozturk received a pay raise of 33 cents per hour, and membership cards for PruCare HMO.

Employee Gheorghe Coanda testified that in late December 1995, before Christmas, he saw employee Luci calling employees to a meeting in the office. Coanda, who was not called, and did not attend the meeting, asked Steward Levesque what was happening. Levesque said that the contract was due to expire shortly.

Coanda stated that a meeting was held that day among the workers. Luci said that employees did not need the Union, and asked what the Union has done for them. Levesque said that the workers had to make a choice as to what the Company offered them, such as better insurance and profit sharing. Coanda said he requested that Levesque and Luci ask a union representative to explain the situation to them. Luci refused, saying the Union did not appear for negotiations. Coanda was not asked to sign the petition when it was circulated by Luci.

Employee Enver Albardak testified that he did not know if there were meetings concerning the Union in December 1995. He stated that after January 15, he attended a meeting with other employees called by Becker, who told the workers that "we will quit the union and we will have the same benefits with the new insurance policy. We will share the profits and you will get a raise." In what may be a rephrasing of the same conversation, Albardak quoted Becker as saying, "[W]e will get rid of the union here and the same benefits will continue after that."

Albardak incredibly testified that the employee vote took place 2 years after that meeting.

Albardak further stated that about 2 or 3 days after the vote, another meeting was held at which Becker and Stoll were present. According to Albardak, Becker showed the workers a paper which he said he received from a Government agency which said that the Union was "out." Becker also told the employees that they will have a new insurance policy. Booklets were distributed, and one employee asked if

[2] The inside employees apparently refers to the nonunit, office clerical workers.

[3] Ozturk stated that he thought the meeting took place in December.

they had dental insurance, to which Becker replied that there was no coverage for that. Albardak stated that about 1 week later, Denmark and an insurance company representative explained the insurance provisions.

Albardak testified that after that meeting, he saw Becker call the employees into his office, individually. Albardak was asked to see Becker but he declined.

B. *Respondent's Witnesses*

As set forth above, in November, Union Agent Cumella asked Shop Steward Levesque to meet with the employees and obtain their demands for a new contract. Levesque testified that in late December 1995, just before Christmas, he conducted a meeting of the unit employees.[4] About 27 employees attended. No management or supervisory personnel were present.

Levesque's testimony is not precise as to the purpose of the meeting. First he testified that he called the meeting because for some time, even for the prior 2 years, he had been hearing negative comments from many employees about the Union. For example employee Anthony Badalucca had complained to him that it had taken 6 months to obtain medical insurance cards from the Union, and the cost of medical care was too high, and that he and others did not see the union representatives that often at the shop.

Later, he testified that the purpose of the meeting was to discuss the upcoming contract negotiations. When the meeting began, in view of the past complaints concerning the Union, he decided, as a threshold matter, to first determine if the employees were still interested in union representation, and if they were, to discuss demands for the new contract.

Employee Badalucca testified that the late December meeting came about because "word just started going around" and the workers decided that a decision had to be made as to whether to continue to support the Union "just to know what to do." Levesque told him that the employees wanted to meet to talk about the problems they had been having with the Union, such as their payment of dues for inadequate representation, and late reimbursement for medical claims. Badalucca said that there were complaints about the Union during his entire 1 year's employment at Respondent's premises.

At that meeting, Levesque first asked for a show of hands as to how many employees wanted to continue to be represented by the Union. A majority voted to cease their affiliation with the Union. Levesque then said that there was no sense in negotiating if 75 percent of the workers no longer want union representation. He asked Luci what action to take next. Luci suggested that they call the Union. Levesque stated that he tried but could not contact the Union, so he volunteered to call the NLRB. He found the phone number of the Regional Office in the telephone book and called the next morning. At that time, the NLRB was closed due to a budget funding dispute, and Levesque was not able to obtain any information.

Levesque then decided to wait to take further action until after the holidays, suggesting that the additional time would permit the workers to think about what they wanted to do, and perhaps change their minds. Badalucca testified that it was suggested that the employees have a written ballot—"something legit," and the workers wanted to wait to see if a union representative would appear.

On January 2, 1996, Levesque held another meeting, which was attended by all the unit employees. No management or supervisory personnel were present. Badalucca testified that Levesque told the workers that the purpose of the meeting was to vote for or against the Union. The result of the vote was 19 ballots against union representation, and 8 ballots in favor of continued representation. The meeting then ended.

Following the balloting, Levesque again attempted to contact the NLRB, but it was still closed. Employee Badalucca, who was the assistant shop steward, wrote the petition, discussed above, which Luci solicited employees to sign. All those who signed were unit and union members, and those signing constituted a majority of the unit.

That day or the next, Levesque and about four others presented the petition to Becker. Levesque told him that the employees met, and a majority signed a petition to drop the Union. The employees asked what would happen concerning their medical benefits—"their main concern was just medical." Badalucca stated that the employees were concerned about whether they would receive company medical benefits. Becker replied that he could not give them any information at that time—until he knew the status of the petition. The issue of a wage increase and profit sharing did not come up, and Badalucca stated that Becker did not promise employees that they would receive any particular benefits, wage increases, or profit plan participation.

About 1 or 2 weeks later, all employees requested to meet with Becker. A meeting was held, attended by Becker, Denmark, and Stoll, at which the workers wanted to know what would happen concerning their medical coverage. Denmark explained the company medical plan, and distributed booklets. There was no mention of the Union at that meeting.

About 2 weeks later, in late January, another meeting was held at which Denmark and an insurance company representative were present.

Levesque and Badalucca stated that prior to that meeting, the employees had not had a meeting with Becker to discuss ending their representation by the Union.

Becker testified, denying holding any meeting with unit employees in December 1995, to discuss eliminating the Union, or to speak about what benefits they could expect if the Union was removed. Nor did he promise benefits or threaten to remove benefits in order to induce the employees to eliminate the Union.

Becker stated that on January 2, Luci told him that some employees wanted to speak with him concerning some unspecified difficulties. Becker agreed to attend a meeting later that day. Twenty-five employees were present at the meeting attended by Becker and no other management or supervisory personnel. Employee Ed Andrews announced that all the workers decided that they no longer wished to be represented by the Union. Levesque asked whether they would lose any benefits such as sick days if they were no longer in the Union, and whether they were eligible for profit sharing.

Becker told them that he could not speak to them concerning benefits if they left the Union because that would be direct bargaining with the employees. He advised them to call the NLRB. One employee mentioned that they attempted to

[4] Employee Badalucca stated that the meeting occurred on about December 27.

do so, but that the NLRB was closed. Becker stated that the workers seemed "uncertain" as to how to proceed inasmuch as the contract was set to expire in 2 days, and asked him how they could obtain information, particularly concerning such issues as benefits.

Becker testified that he then "took control of the meeting" and told the workers that although he could not discuss with them any benefits which may or may not be available to them if they left the Union, he could answer questions concerning benefits that the nonunit employees enjoyed. The workers then asked questions concerning those benefits, and Becker responded that the nonunit employees received profit sharing. The employees asked if they would receive these benefits if they left the Union, and Becker replied that he could not answer that question since their meeting was not a bargaining session, but that he could provide information about the nonunit employee's benefits.

Becker denied that during that meeting he promised employees medical benefits, wage increases, or a profit-sharing plan if they eliminated the Union, and he did not threaten them with the loss of any benefits. Becker stated that in the 8 years of his employ with Respondent unit employees have asked him about once per week or 30 to 40 times per year about the benefits enjoyed by nonunit personnel. He has always answered such questions.

Becker stated that the following day, January 3, five employees entered his office. Luci told him that the workers decided that they did not want union representation, and gave him the petition, discussed above.

Becker testified that later that day, Cumella and Immerglick entered the premises and told Becker that they had heard that Respondent was offering employees health benefits, profit sharing, and large wage raises to leave the Union. Becker denied doing so, and told them that he was asked questions concerning the benefits program, and he had answered the questions, adding that he told the employees to contact the Union if they thought that had anything to do with their leaving the Union. Becker asked them if that was their bargaining session, and the union representatives replied that there was nothing to talk about. Becker did not mention that he had received the petition from the employees.

On January 5, Becker sent the letter, discussed above, to the Union, in which Respondent declined to continue to recognize the Union. He testified that the letter was based on his: (a) having received the petition signed by a majority of employees, stating that they did not wish to be represented by the Union and (b) asking each employee who signed the petition whether the signature was his. That occurred in the several days following his receipt of the petition. Badalucca denied being asked that question by Becker.

Respondent admits that following its sending the January 5 letter, it gave wage increases to, and took steps to enroll the employees formerly represented by the Union into its health insurance program, and enrolled them in the PruCare HMO program, which covered its nonunit employees.

Becker's admitted reason for giving the raise was that he believed that the "entire scenario" of the prior events had caused "concern, confusion, anxiety and uncertainty about what was going to be happening" among the employees. Becker testified that in view of that situation he wanted to "do something" for the workers, and he decided upon a 2.5-percent raise for those employees. He informed them of the raise in individual meetings with the employees, in his office, in late January. Employees' pay stubs establish that they received the raise in the one week pay period ending January 21.

Becker stated that prior to those meetings he had not promised or told the former unit employees that they would be receiving wage raises. Further, Becker denied promising employees a wage raise, profit-sharing plan, a new medical insurance plan or other benefits if they refrained from joining the Union. Nor did he threaten to stop providing employees with medical benefits which they received pursuant to the Union Welfare Fund if they joined or supported the Union. He similarly denied telling them that it would be futile for them to join or support the Union as their representative.

Analysis and discussion

By virtue of the expiring contract, the Union enjoyed a presumption that it continued to be the majority representative of the employees. *Hooper's Chocolates*, 319 NLRB 437, 441 (1995).

An employer may rebut a union's presumption of majority status by demonstrating: (a) that the union in fact no longer enjoys majority support or (b) objective factors sufficient to support a reasonable and good-faith doubt of the union's majority status. *Laidlaw Waste Systems*, 307 NLRB 1211 (1992).

The employer's good-faith doubt must arise in a context free of unfair labor practices, and free of employer activities aimed at causing employee disaffection with the union. *Rock-Tenn Co.*, 315 NLRB 670, 673 (1994); *American Linen Supply Co.*, 297 NLRB 137, 146 (1989).

Thus, the main question presented is whether Respondent committed unfair labor practices which tainted the petition which was presented to it in early January.

As set forth above, General Counsel's witnesses Ozturk and Coanda testified that a meeting was held in late December. Ozturk stated that at the meeting, Becker offered the employees better insurance, pay raises, and profit sharing if they left the Union, and promised them the same benefits as the office employees. Coanda, who did not attend the meeting, testified that following the meeting, Levesque told him that the workers had to make a choice as to what Respondent offered them, such as better insurance and profit sharing. Coanda could not even confirm that Becker conducted that meeting—he only stated that Luci called employees to a meeting in the office.

Becker, supported by employee witnesses Levesque, Badalucca, and to some extent Albardak, denied that he spoke to employees at any meeting in December.

This case turns on whether that meeting occurred, and whether Becker made the promises testified about by Ozturk. If the promises were made, it is clear that they are of such a nature as to have caused employee disaffection with Union, and would have precluded Respondent from relying upon the tainted petition as a basis for questioning the Union's continued majority status and withdrawing recognition from the Union. *Hearst Corp.*, 281 NLRB 764 (1986).

Thus, Ozturk's testimony is crucial. He stated that all the employees attended the alleged late December meeting. However, other employees called by the General Counsel, Coanda, and Albardak, testified that they did not attend such a meeting. In addition, Albardak did not know whether a

meeting occurred in December at all. Instead, he attributed the meeting to January 15, after the petition was presented to Becker.

Thus, of all the employees who allegedly attended the critical meeting according to Ozturk, only he was called to testify concerning it. As noted above, his statement that all the employees attended the meeting was incorrect.

Further, as set forth above, Ozturk's pretrial affidavit contradicted his hearing testimony in a critical respect. At hearing he quoted Becker as promising benefits if the employees eliminated the Union, but his affidavit denies that the Union was mentioned at that meeting. Thus, it appears that Ozturk was willing to embellish his hearing testimony by attributing to Respondent an unlawful motive, the removal of the Union, in speaking about additional benefits. No mention was made of such an unlawful motive in his pretrial affidavit.

Ozturk's testimony is further suspect with respect to his statement that sometime after a January 22 meeting he was told by Becker that he would be given a pay raise if the Union was eliminated. It would make no sense for Becker to condition a pay raise on the removal of the Union since, several weeks before, Becker had already withdrawn recognition from the Union and told it that Respondent no longer recognized it as the representative of the employees.

I had considered crediting Ozturk's testimony, based upon the context within which the late December meeting allegedly occurred. Thus, it would appear that if they were made, Becker's promises were prompted by his upset at learning, on December 27, that Respondent, and not its employees, was required to assume the increased cost in welfare benefits in the new contract. An inference, perhaps only speculation, would then have been made that Becker sought to induce the employees to abandon the Union and accept Respondent's welfare plan so that the increased cost in the Union's plan could be avoided.

However, it appears that it was not until December 27 that Becker was informed that his understanding of who was to pay for the increased Union Welfare benefits was wrong. But employee Coanda testified that Becker's meeting occurred before Christmas, December 25. Thus, if Becker's alleged promises were inspired by his desire to eliminate the Union because of the increased welfare costs, the meeting must have occurred after December 27, and not before Christmas, as Coanda testified. Ozturk was not specific as to when the meeting occurred—he stated generally that it took place in December.[5]

It must also be noted that Ozturk was not absolutely certain that the meeting occurred in December. He stated: "I think that meeting take place in December." When asked what part of December, he said, "[W]ell, I don't remember exactly when but [it] was in December."

Thus, the testimony of Coanda, the only other employee witness to somewhat corroborate Ozturk, cannot be relied upon. It must be again noted that Coanda did not attend Becker's alleged late December meeting, but only reported that Luci called employees to a meeting in the office, and that later, Levesque told Coanda that employees must make a choice concerning Respondent's offer. Such testimony does not bind Respondent, it not having been established that Levesque was an agent of Respondent.

There is simply no other evidence, other than Ozturk's testimony, to support a finding that the late December meeting in which Becker allegedly made promises to his employees occurred. Accordingly, for the above reasons I cannot credit Ozturk's testimony.

On the other hand, Becker, supported by employees Levesque and Badalucca testified that such a meeting did not occur. Coanda could not testify that Becker addressed the employees in that meeting. Albardak did not know if such a meeting occurred, but stated that if it did, it took place after January 15, after the petition was presented to Becker, and after Respondent had withdrawn recognition from the Union.

Two complaint allegations relate to an alleged meeting which occurred in mid-December or early January 1996, in which Becker, Stoll, and Denmark allegedly threatened to cease providing its employees with the Union Medical Fund, and informed them that it would be futile for them to continue to be represented by the Union. The complaint further alleges that at that time, those officials bypassed the Union and dealt directly with its employees concerning their terms and conditions of employment.

The only testimony presented concerning this alleged meeting was that of Ozturk. He testified that this meeting occurred 1 day or 1 week after the January 2 vote, at which meeting Officials Becker, Stoll, and Denmark promised the employees better benefits and profit sharing if they withdrew from the Union. Albardak's testimony about this alleged meeting was confused. He stated that it occurred after January 15, 2 years after the vote, at which the officials just promised a new insurance policy.

If this meeting occurred at all, which is doubtful, it clearly took place after the employees had met and voted to end their representation by the Union. Accordingly, it adds nothing to the General Counsel's case.

I have also considered the testimony of Cumella and Immerglick in relation to Ozturk's testimony concerning the crucial December meeting. Cumella's testimony is that he was told by Levesque on January 3 that Becker offered the employees benefits. Levesque did not corroborate that testimony. They were not told specifically when the offer was made. On its face, all that we have is that the union officials learned on January 3 that an offer was made.

Nevertheless, there are certain suspicious aspects to the scenario presented by Respondent, particularly with respect to the January 3 confrontation with the union officials. When Cumella and Immerglick appeared at the shop on January 3, Becker asked them if they were there to bargain. Oddly, he did not tell them that he had no obligation to bargain with them inasmuch as he had just received a petition which freed him of his duty to bargain with the Union. His concealment of that fact lends support to a finding that Becker had something to hide by not disclosing it to the union officials.

Further, Becker stated that he supported his belief that the Union no longer represented the employees by personally verifying the signatures on the petition, but Badalucca denied being asked by Becker if he signed the petition. Verification of signatures on a petition is not required before an employer withdraws recognition, and Badalucca's failure to corroborate

[5] In answer to a leading question, he responded that the meeting took place around the time the contract was due to expire.

Becker is not fatal to Respondent's case. *Brown & Root U.S.A.*, 308 NLRB 1206, 1207 (1992).

I reject the General Counsel's suggestion that by answering questions of its unit employees as to what benefits the nonunit employees enjoy, even assuming but not finding that it occurred in December, Becker thereby engaged in bargaining with the employees.

> It is not unlawful for an employer to hold a meeting to inform employees of the wages and benefits enjoyed by its nonunion employees, so long as it does no more than truthfully describe the wages and benefits of its other employees and does not make any implied promises that the wages and benefits of the employees at the meeting will be adjusted if the union is voted out. [*Fabric Warehouse*, 294 NLRB 189 (1989).]

In coming to the conclusions I make here, I note that, although not required for a finding of unfair labor practices, there is no evidence of direct solicitation by Respondent of a petition to eliminate the Union. Rather, Levesque and Badalucca testified that the circulation of the petition was made because there was unhappiness with the Union, and the workers decided to get together first, before contract demands were drawn, to see if they were still interested in union representation.

The lack of a sudden event which would have compelled the employees to withdraw from the Union at this time after many years of representation is somewhat suspect. The facts, as testified by Levesque and Badalucca, that the employees were dissatisfied with union representation does not inspire a finding that they would have taken the action they did at this time without prompting.

Nevertheless, this is pure speculation. All that we have in this record, without Ozturk's discredited testimony, is undisputed testimony that the employees: (a) met and discussed their displeasure with continued union representation; (b) voted by show of hands, and then by secret ballot to eliminate the Union; and (c) made their decision known to Respondent, which then properly withdrew recognition from the Union.

Accordingly, I find and conclude that when presented with the employee petition on January 3, signed by a majority of the unit employees, Respondent possessed objective evidence which supported a reasonable and good-faith doubt that the Union continued to represent a majority of its employees. I, therefore, find that Respondent properly withdrew recognition from the Union, and refused to bargain with it. *A. W. Schlesinger Geriatric Center*, 304 NLRB 296, 301 (1991).

On this record I am only able to find that circumstantial evidence, barely rising above the level of speculation, exists that the withdrawal of recognition was motivated by union animus. Such suspicions cannot support a finding that Respondent's withdrawal of recognition was unlawful. *Brown & Root U.S.A.*, supra at 1207.

It is the General Counsel's burden to prove the essential factual elements of the unfair labor practices alleged by a preponderance of the evidence. *Ramar Coal Co.*, 303 NLRB 604 fn. 1. (1991). I find that the General Counsel has not met that burden.

Having found that it has not been proven by a preponderance of the evidence that Respondent made unlawful promises prior to its being presented with the employee petition on January 3, 1996, I find that no unfair labor practices have been committed, and that Respondent properly withdrew recognition from the Union by its letter of January 5, 1996. Its admitted actions thereafter, such as granting a wage increase and enrolling its employees in its health insurance plan, were similarly not unlawful.

CONCLUSIONS OF LAW

1. The Respondent, Lepel Corporation, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 918, International Brotherhood of Teamsters, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has not violated the Act by withdrawing recognition from the Union on January 5, 1996, and by refusing to bargain with it.

4. Respondent has not violated the Act in any other manner as alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The complaint is dismissed in its entirety.

[6]If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.